Supreme Court, U.S.
FILED
APR 20 1992
OFFICE OF THE CLERK

(2)

NO. 91-1507

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

STEPHEN A. KOCZAK

Petitioner

v.

JIM SMITH,
Secretary of State, State of Florida;
ROBERT A. BUTTERWORTH,
Attorney General, State of Florida;
CHARLES WHITEHEAD,
Chairman Florida Democratic Party;
JOHN W. VOGT,
President, Florida Senate;
JON MILLS
Speaker, Florida House of Representatives;

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Mark S. Levine
245 East Virginia Street
Tallahassee, Florida 32301
(904)222-6580

40

TABLE OF CONTENTS

Title	Page Number
Citations of Court Orders and Decisions	2
Jurisdictional Grounds	3
Statement of Case	3
Summary of Argument	6
Argument	9
A. There Is No Conflict In Decisions	9
1. Recent Opinions	9
2. Other Cases	14
3. In the Contest of a Primary Election, the Constitutional Rights of the Party and its Members are Paramount	18
4. Petitioner's Right to the Equal Protection of the Laws Has Not Been Violated by the Defendant's Actions	20
Conclusion	24
Certificate of Service	26

QUESTIONS PRESENTED

This Brief in Opposition will address the questions presented in Petitioner's Petition for Writ of Certiorari.

INTERESTED PARTIES

Pursuant to Rule 15 of the Supreme Court of the United States, below are the names and titles of the interested parties:

JAMES SMITH, Secretary of State, State of Florida

ROBERT A. BUTTERWORTH, Florida Attorney General

JOHN W. VOGT, President Florida Senate

JON MILLS, Speaker, Florida House of Representatives

CHARLES WHITEHEAD, Ex-Chairman, Florida Democratic Party

GEORGE L. WAAS, Attorney with the office of the Florida Attorney General, Civil

Division, Counsel for Appellee Smith, and Defendants Vogt and Mills.

JOHN H. FRENCH, JR., Counsel for Defendant Whitehead

STEPHEN A. KOCZAK, Plaintiff/Appellant/Petitioner

THE HONORABLE FEDERICO A. MORENO, United States District Court Judge, Miami Division, Southern District

THE HONORABLE MAURICE M. PAUL, United States District Court Judge, Tallahassee Division, Northern District of Florida

ELEVENTH CIRCUIT JUDGES EDMONDSON, BIRCH and DUBINA

TABLE OF AUTHORITIES

Cases	Page Number
Adams v. Askew, 511 F2d 700 (5th Cir. 1974)	20
Aff'd mem, 429 U.S. 989 (1976)	19
American Party of Texas v. White, 15 U.S. 767, 781, (1974)	5, 21
American Party of Texas v. White, 41 U.S. 767, 781 (1974)	20, 21
Belluso v. Poythress, 485 F.Supp. 904 (N.D. Ga. 1980)	19, 21
Blassman v. Markworth, 359 F.Supp. 1 (D.J11.1973)	20
Bullock v. Carter, 405 U.S. 134 (1973)	20
Clough v. Guzzi, 416 F.Supp. 1057 (D. Mass. 1976)	20
Consumer Party v. Davis, 633 F.Supp. 877,888 (E. D. Pa. 1986)	5, 20, 21
Cross v. Fong Eu, 430 F.Supp. 1036 (N.D. Cal. 1977)	19, 21
David Duke, et al. v. Jim Smith, Secretary of State, et al., Case No. 0134-CIV-MORENO (S.D. Fla. 1992)	13
Democratic Party of the United States v. Wisconsin, 101 S.Ct. 1010 (1981)	11

Democratic Party of the United States v. Wisconsin, 450 U.S. 107, 123-124 (1981) 16
Duke v. Cleveland, Case No. 1:92-CV-116-RCF 11, 21
Eu v. San Francisco City Democratic Central Committee, 489 U.S. 214 (1989) 12
Jenness v. Fortson, 403 U.S. 431 (1971) 23
Joseph v. City of Birmingham, 510 F.Supp. 1319 (E.D. Mich. 1981) 20, 21
Kay v. Smith, Case No.: 40009-MMP (N.D. Fla. 1988) 9
Nader v. Schaffer, 417 F.Supp. 837, 846-47 (D.Conn.) 19
Ripon Society v. National Republican Party, 525 F.2d 567 (D.C. Cir. 1975) 14, 16
Rosario v. Rockefeller, 417 F. Supp. 837, 846-47 (D. Conn.) 18
Storer v. Brown, 415 U.S. 7824,733 (1974) 5
San Antonio School Dist. v. Rodrigues, 411 U.S. 1, 28 (1976) . . . 21
Tashjian v. Republican Party of Connecticut, 107 S.Ct. 544 (1986) 11
Tashjian v. Republican Party of Connecticut, 479 U.S. 28 (1986) 16
Walter v. Yucht, 352 F. Supp. 85 (D. Del. 1972) 20
Wymbs v. Republican State Executive Committee of Florida, 719 F.2d 1072 (11th Cir. 1983) 17

Statutes	Page Number
28 U.S. C #1331 and #1343	4
42 U.S. C #1983, #2201 and #2202	8
Florida Statutes 103.101(2)(c)	4
Florida Statutes 99.0955	23
Florida Statutes 99.096	23
Florida Statutes 103.101	7, 8, 9

Constitution	Page Number
ARTICLES II, IV, and V	3

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES INVOLVED IN THE CASE

UNITED STATES CONSTITUTION

ARTICLE II, SECTION 1(5)

No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years and been fourteen years a resident within the United States.

ARTICLE IV, SECTION 2(1)

The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

ARTICLE VI, SECTIONS (2) AND (3)

(2)This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

(3)The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or trust under the United States.

FIRST AMENDMENT

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to assemble, and to petition the Government for a redress of grievances.

FOURTEENTH AMENDMENT, SECTION ONE

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor

deny to any person within its jurisdiction the equal protection of the laws.

FLORIDA STATUTES

CHAPTER 103 Section 103.101 **Presidential preference primary.**

(2)There shall be a Presidential Candidate Selection Committee composed of the Secretary of State, who shall be a nonvoting chairman; the Speaker of the House of Representatives; the President of the Senate; the minority leader of each house of the Legislature; and the chairman of each political party required to have a presidential preference primary under this section.

(a)By December 31 of the year preceding the Florida presidential preference primary, each political party shall submit to the Secretary of State a list of its presidential

candidates to be placed on the presidential preference primary ballot or candidates entitled to have delegates appear on the presidential preference primary ballot. The Secretary of State shall prepare and publish a list of the names of the presidential candidates submitted. The Secretary of State shall submit such list of names of presidential candidates to the selection committee on the first Tuesday after the first Monday in January each year a presidential preference primary election is held. Each person designated as a presidential candidate shall have his name appear, or have his delegates' names appear, on the presidential preference primary ballot unless all committee members of the same political party as the candidate agree to delete such candidates name from the ballot....

(b)Any presidential candidate whose name does not appear on the list submitted to the Secretary of State may request that the selection committee place his name on the ballot. Such request shall be made no later than the second Tuesday after the first Monday in January.

RULES OF THE SUPREME COURT

Rule 10

Considerations Governing Review on Writ of Certiorari

1. A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion,

indicate the character of reasons that will be considered:

(a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

NO. 91-1507

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

STEPHEN A. KOCZAK

Petitioner

v.

JIM SMITH,
Secretary of State, State of Florida;
ROBERT A. BUTTERWORTH,
Attorney General, State of Florida;
CHARLES WHITEHEAD,
Chairman Florida Democratic Party;
JOHN W. VOGT,
President, Florida Senate;
JON MILLS,
Speaker, Florida House of Representatives;

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Mark S. Levine
245 East Virginia Street
Tallahassee, Florida 32301
(904)222-6580

CITATIONS OF COURT ORDERS AND DECISIONS

1) Order by Judge Maurice M. Paul, January 19, 1988, Case No.: TCA 88-40015-MMP

2) Final Summary Judgment by Judge Maurice M. Paul, May 24, 1989, Case No.: TCA 88-40015-MMP

3) Order Denying Reconsideration by Judge Maurice M. Paul, July 7, 1989, Case No.: TCA 88-40015-MMP

4) Affirmed, Per Curiam, by United States Court of Appeals Case No. 89-3665

5) Order Denying Petition for Rehearing, Per Curiam, by Honorable J. L. Edmondson, June 25, 1991, Case No. 89-3665

6) Order Denying Petition for Rehearing En Banc, Per Curiam, by Honorable J. L. Edmondson, June 25, 1991, Case No.: 89-3665

7) Order Granting Appellants' Motion for Stay by Honorable J. L. Edmondson, January 23, 1992, Case No.: 89-3665

JURISDICTIONAL GROUNDS

The order and opinion of the Court of Appeals denying timely petition for review en banc was entered on December 20, 1991, reaffirming orders and opinions of September 27, 1991, and June 25, 1991.

The statutory provision that confers jurisdiction on this Court to review this case by writ of certiorari is 28 U.S C. #1254(1). Petition is submitted under Rule 10 of the Rules of the Supreme Court of the United States.

STATEMENT OF CASE

The basis for federal jurisdiction in the court of first instance if action was taken under "color of state law," would be the United States Constitution, Articles II, IV, and V, Amendments One and Fourteen; Title 42 USC Sections 1983, 1985, 1986, 1981 et

seq. and 1973; and Title 28 USC Sections 1331 and 1343. However, there is a long line of precedent that stands for the proposition that political parties have the right to determine and enforce the qualifications of members and candidates through self-governance.

Florida Statutes mandate the existence of a Presidential Candidate Selection Committee comprised of three Republican leaders, three Democratic leaders and the Secretary of State. In actual operation, the three Republican leaders submit the list of Republican candidates to be placed on the primary and the three Democratic leaders submit the list of Democratic candidates to be placed on the Primary Ballot. The State in Section 103.101(2)(c), Florida Statutes, allows a Presidential candidate whose name does not appear on the list to request the

selection committee to reconsider placing the name on the ballot.

Additionally, the Petitioner's allegations that there are no alternative means of access to the Presidential Primary, therefore assuring state action is not founded on any legal precedent. In fact, the most recent cases have held that there is no fundamental right to primary participation. Consumer Party v. Davis, 633 F.Supp. 877,888 (E.D. Pa. 1986); see also, American Party of Texas v. White, 15 U.S. 767, 781 (1974). The State of Florida provides an independent candidate route as an "alternative to being nominated in one of the direct party primaries." Storer v. Brown, 415 U.S. 7824,733 (1974). The candidate can also organize and campaign outside the parameters of the Republican and Democratic Party's for access to the general ballot. Such

reasonable alternatives have been ruled constitutionally valid and in no way violative of the persons constitutional rights. The decisions of the United States District Courts and United States Court of Appeals are in accordance with the decisions of other United States Courts of Appeal and with the United States Supreme Court. Additionally, Charles Whitehead is no longer the State Chairman of the Florida Democratic Party. Simon Ferro now holds the position of State Chairman of the Florida Democrtic Party and as such has an interest in this preceeding. Counsel for Simon Ferro is Mark S. Levine, who has filed this Brief in Opposition on his behalf.

SUMMARY OF ARGUMENT

A review by Writ of Certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be

granted only when there are special and important reasons therefor. Rules of the Supreme Court, Rule 10. The case at bar poses no special and important reasons significant to allow this Court to grant the Writ for Certiorari. Section 103.101, Florida Statutes, has been upheld by two separate United States District Courts. Judge Paul of Northern District of Florida, U. S. District Court, Case No.: TCA 88-40015-MMP (N.D. Fla. 1988), held the provisions constitutional in 1988 and most recently in January, 1992. Judge Moreno, United States District Court for the Southern District of Florida, Case No.: 0-134-CIV-Moreno (S.D. Fla 1992), also upheld the validity of the State Statute. Both courts also found no state action on the part of the Presidential Selection Committee actors. The courts held that the actions of the Committee were not

taken "under color of state law," and therefore, Plaintiffs had failed to establish a cognizable claim under 42 U.S.C. ss 1983 and 28 U.S.C. ss 2201 and 2202, challenging the constitutionality of Section 103.101, Florida Statutes.

The rulings of these two United States District Courts of Appeal are in accordance with other decisions. The plethora of case law supports the findings of these two Courts and the affirmation by the United States Court of Appeals and said case law will be discussed at length in this Brief in Opposition. Therefore, this Court should deny said Petition since the considerations of Rule 14 of the Rules of the United States Supreme Court are not met.

ARGUMENT

A. There Is No Conflict In Decisions

1. Recent Opinions

In Kay v. Smith, Case No. 40009-MMP (N.D. Fla. 1988), the United States District Court for the Northern District of Florida decided a case substantially similar to the one at Bar. In Kay and the cases with which it was consolidated, the plaintiffs sued the Secretary of State of Florida and the Chairman of the Democratic Party of Florida, because the Plaintiffs were excluded from the presidential preference primary ballot in 1988. The plaintiffs sought an injunction. In the Court's Order denying the Plaintiffs' Motion for Preliminary Injunction, Judge Maurice Paul stated: "The Court finds that the role of the Florida Democratic Party under Section 103.101 does not rise to the

level of state action sufficient to state a claim under the Civil Rights Act. However, the evidence does show that the Florida Democratic Party has promulgated a delegate selection plan which has been approved by the National Democratic Party....Chairman Charles Whitehead did not act unilaterally, but as a functionary of the State Executive Committee, in submitting a revised list of candidates to the Secretary of State. That revised list added candidate Gary Hart, a nationally recognized contender, who had re-entered the presidential race. After consideration of all the testimony and the exhibits offered into evidence, the Court concludes that the candidate selection procedures of the Florida Democratic Party are not constitutionally infirm. This Court will not interfere with that Party's plan for selecting candidates to be placed on that Party's presidential

preference primary ballot. See Tashjian vs. Republican Party of Connecticut, 107 S.Ct. 544 (1986), Democratic Party of the United States vs. Wisconsin, 101 S.Ct. 1010 (1981).

Judge Paul's Order was affirmed by the Eleventh Circuit Court of Appeals. On January 21st, 1992, the United States District Court for the Northern District of Georgia issued its Order in Duke vs. Cleveland, Case No. 1:92-CV-116-RCF (N.D. Ga. 1992). The Plaintiff sought a Temporary Restraining Order and Preliminary Injunction enjoining the Defendants from printing the Republican Primary Ballot without including David Duke's name.

The District Court denied the Plaintiffs' Motion for Injunction Relief. The District Court found: (1) The Plaintiffs "failed to show the Court that a First Amendment right exists, which guarantees

access to a party's primary ballot (in direct contravention of the Party's stated desires): (2) The Plaintiffs failed to persuade the Court that the Party representatives in the Presidential Candidate Selection Committee were state actors when they cast their vote against the inclusion of David Duke on the primary ballot; and (3) There was a grave possibility of damage to the political process by forced association of the Republican Party of Georgia with the Plaintiff. Id. at 6, 10-11. The District Court stated that there was no right to be included on a political party's primary ballot. The Court also cited Eu vs. San Francisco City Democratic Central Committee, 489 U.S. 214 (1989) for the proposition that a political party has the right to determine those who constitute the association, to select a "standard bearer," and determine the

process by which its leaders are elected.

As recent as January 30, 1992, Judge Moreno of the United States District Court of the Southern District of Florida, David Duke, et al. vs. Jim Smith, Secretary of State, et al., Case No. 0134-CIV-MORENO (S.D. Fla. 1992), denied the Plaintiffs' demand for a temporary injunction basing his opinion on the "long line of precedent that stands for the proposition that political parties have the right to determine and enforce the qualifications of members and candidates through self-governance." The Plaintiffs' were seeking placement on the presidential preference primary ballot of the Democratic and Republican parties in the State of Florida. The Court found that "the state action issue was the threshold question in this case." Judge Moreno stated that: The fact that the Florida Statutes mandate

the existence of a Presidential Candidate Selection Committee, currently comprised of three Republican leaders, three Democratic leaders and the Secretary of State, does not transform that Committee from internal party proceedings to state action....Allowing Plaintiffs any opportunity to interfere with the internal functions and decisions of the political parties would be a violation of the parties own rights of association.

2. Other Cases

A long line of precedent stands for the proposition that political parties have the right to determine and enforce the qualifications of members and candidates through self governance and the state cannot interfere with this power. In Ripon Society vs. National Republican Party, 525 F.2d 567 (D.C. Cir. 1975), the United States Court of Appeals for the District of Columbia Circuit

eloquently expressed this idea: "[A] Party's choice, as among various ways of governing itself, of the one which seems best calculated to strengthen the party and advance its interest, deserves the protection of the Constitution as much, if not more, than its condemnation. The express constitutional rights of speech and assembly are of slight value indeed if they do not carry with them a concomitant right of political association. Speeches and assemblies are, after all, not ends in themselves but means to affect change through the political process. If that is so, there must be a right no only to form political associations, but to organize and direct them

in the way that will make them most effective. Id. at 585.

The Constitution and Bill of Rights protect these organizations from unwarranted government intrusion and interference. "[A] State, or a court may not constitutionally substitute its own judgment for that of the Party...and as is true of all expressions of First Amendment freedoms, the Court may not interfere on the ground that they be particular expression as unwise or irrational." Democratic Party of the United States vs. Wisconsin, 450 U.S. 107, 123-124 (1981). In Tashjian vs. Republican Party of Connecticut, 479 U. S. 28 (1986), the United States Supreme Court held a statute unconstitutional on First Amendment grounds because it restricted political parties rights of association. The Republican Party of Connecticut wanted to allow participation

in its primaries even though they had only recently registered as republicans. The state forbade participation of such recent registrants. The Supreme Court decided that such interests were greatly outweighed by the political party's right to associate with those of its choosing. The Court stated, "The Party's determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution." Id. at 224. In 1983, the Eleventh Circuit Court of Appeals upheld a political party's right to choose the method by which it would select delegates to the party's national convention, See Wymbs vs. Republican State Executive Committee of Florida, 719 F.2d 1072 (11th Cir. 1983). Even though the plaintiffs alleged the party's delegate selection process violated the right to equal

representation and equal participation, the Court sustained the political party's right to govern itself free from government intrusion. A long line of cases support the Respondent's position that the decision to exclude Stephen Koczak from the Democratic Party primary does not violate Koczak's constitutional rights.

3. In the Contest of a Primary Election, the Constitutional Rights of the Party and its Members are Paramount

While the voters' rights to vote may be paramount in the context of a general election, the United States Supreme Court has held that denying an individual the opportunity to vote for a candidate in a primary election does not infringe on the voters' right of freedom of association. Rosario vs. Rockefeller, 417 F. Supp. 837, 846-47 (D. Conn.), Aff'd mem., 429 U. S. 989

(1976). However, the Democratic Party of Florida's own right to association and those of its members would be infringed upon the Plaintiffs intended intrusion into the Party's candidate selection process. See Nader vs. Schaffer, 417 F.Supp. 837, 846-47 (D.Conn.), Aff'd mem., 429 U.S. 989 (1976).

Numerous courts have recognized the fundamental differences between primary elections, in which the parties select their candidates in general elections, in which the people choose their representatives. See Belluso vs. Poythress, 485 F.Supp. 904 (N.D. Ga. 1980), Cross vs. Fong Eu, 430 F.Supp. 1036 (N.D. Cal. 1977).

Therefore, this Respondent respectfully submits that the Parties are entitled to conduct its primary election free from the Plaintiffs intrusion and infringement of the

Constitutional rights of the Party and its members.

4. Petitioner's Right to the Equal Protection of the Laws Has Not Been Violated by the Defendants' Actions

There is no fundamental right to run for public office. The United States Supreme Court has refused to recognize such a right. Bullock vs. Carter, 405 U.S. 134 (1973). See also Adams vs. Askew, 511 F2d 700 (5th Cir. 1975); Joseph vs. City of Birmingham, 510 F.Supp. 1319 (E.D. Mich. 1981); Clough vs. Guzzi, 416 F.Supp. 1057 (D. Mass. 1976); Blassman vs. Markworth, 359 F.Supp.1 (D.J11.1973); Walter vs. Yucht, 352 F. Supp. 85 (D.Del.1972). Nor is there any constitutional right to primary participation. Consumer Party vs. Davis, 633 F. Supp. 877, 888 (E.D. Pa. 1986). See also American Party of Texas vs. White, 41 U.S. 767, 781 (1974). Furthermore, there are no

allegations which suggest that Stephen Koczak is a member of a suspect class protected by the equal protection laws. See San Antonio School Dist. vs. Rodrigues, 411 U. S. 1, 28 (1976).

In the absence of the implication of a fundamental right or a suspect classification -- which is clearly not involved here -- an action is measured by the criterion of mere rationality. See Joseph, 510 F.Supp. at 1328; Belluso vs. Poythress, 485 F.Supp. 904, 910 (N.D. Ga 1980). Interests in limiting the size of the ballot to minimize voter confusion and to preserve the integrity of the process have passed constitutional muster. See American Party, Consumer Party. Therefore, Petitioner's rights to the equal protection of the laws has not been violated by the Defendant's action.

The cases are clear in finding that a Plaintiff would not be prejudiced if the Plaintiff retained the opportunity to be listed on the general election ballot as an independent candidate. In Cross vs. Fong Eu, 430 F. Supp. 1036 (N.D. Cal. 1977), the Plaintiff claimed she was prejudice when she was excluded from running in a California party primary. The Court held her allegations clearly did not state a claim for relief, either based upon constitutional principles or otherwise. Furthermore, the Plaintiffs First Amendment rights are not violated as "Plaintiffs have cited no law which prevents them from organizing or campaigning outside the parameters of the Republican Party primary and any candidates absent from the primary ballot in no way prevents them from accessing the general ballot. Order, Duke v. Cleveland, p.5.

Like California, Florida provides an adequate independent candidacy route as "an alternative to being nominated in one of the direct party primaries." Any injury alleged by the Plaintiff could be redressed simply by having the proposed candidate register as an independent candidate for office, pursuant to Section 99.0955, Florida Statutes. Alternatively, the individual could register as a "minor party candidate," pursuant to Section 99.096, Florida Statutes. These sections provide a constitutionally permissible alternative to the plaintiff participating in the democratic presidential preference primary. Jenness vs. Fortson, 403 U.S. 431 (1971).

Members of the public who wish to vote for Stephen Koczak still have the option of sponsoring Koczak as a candidate on the Florida general election ballot. The

supporters of Koczak can organize a political party for those who share Koczak's beliefs. Therefore, the Democratic Party has not harmed the public from precluding Koczak from running in the Party's presidential primary. In fact, the Democratic Party of Florida's decision is clearly consistent with principles that have provided for fair, competitive, and meaningful elections in our nation for more than 200 years. On this ground as well, the Petition for Writ of Certiorari should be denied.

III. CONCLUSION

For the reasons set forth above, the Petition for Writ of Certiorari should be denied.

DATED this 16th day of April, 1992.

Respectfully Submitted,

MARK S. LEVINE, ESQUIRE
245 East Virginia Street
Tallahassee, Florida 32301
(904)222-6580

Florida Bar #256617
ML-3112

Attorney for Simon Ferro,
State Chairman of the
Florida Democratic Party

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to GEORGE L. WAAS, Esquire, Assistant Attorney General, Department of Legal Affairs, The Capitol, Suite 1501, Tallahassee, Florida 32399-1050; JOHN N. FRENCH, Esquire, Messer, Vickers, Caparello, French & Madsen, P. O. Box 1876, Tallahassee, Florida 32302-1806; and STEPHEN A. KOCZAK, Pro Se, 2932 Macomb Street, N.W., Washington, DC 20008; by U. S. Mail on this 16th day of April, 1992.

MARK S. LEVINE, ESQUIRE